

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4665

IN THE MATTER OF:

Served September 12, 1995

Application of WASHINGTON, D. C.)
JITNEY ASSOCIATION, INC., for a)
Certificate of Authority --)
Regular Route Operations)

Case No. AP-95-26

By application accepted for filing April 27, 1995, Washington, D.C. Jitney Association, Inc., a District of Columbia corporation, seeks a certificate of authority for regular route operations in the District of Columbia in vehicles with a seating capacity of less than 16 persons only, including the driver.

The Washington Metropolitan Area Transit Authority (WMATA) opposes this application. The protest alleges that applicant's proposed operations will compete with Metrobus service in violation of Titles II and III of the Compact and that this competing service will confuse a riding public which has come to rely on an integrated transportation system operating under a uniform fare structure.

DISCUSSION AND CONCLUSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant . . . if it finds that --

(i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and
(ii) that the transportation is consistent with the public interest.

An applicant bears the burden of establishing fitness and consistency with the public interest.¹ The fitness inquiry focuses on an applicant's financial fitness, operational fitness, and regulatory compliance fitness.² Once an applicant has made its prima facie case, the burden shifts to protestant to contravene that showing, which includes demonstrating that protestant's operations will be endangered or impaired contrary to the public interest.³ Hence, we do not reach

¹ In re Double Decker Bus Tours, W.D.C., Inc., No. AP-95-21, Order No. 4642 (Aug. 9, 1995).

² Id.

³ Id.

the issues raised in the protest until we are satisfied that applicant has made its prima facie case. We find that applicant has not made a prima facie case on the issues of financial fitness, operational fitness and consistency with the public interest.

Appended to the application as Exhibit E is a pro forma balance sheet. The balance sheet lists as applicant's only asset \$500,000 in cash. According to applicant this number represents investor commitments which are contingent on approval of the application. To make out a prima facie case of financial fitness applicant must proffer evidence that it "has secured the financing needed to implement and sustain the proposed service."⁴ Accordingly, applicant will be directed to file a current balance sheet, supported by legally enforceable stock subscriptions as applicable.⁵

Applicant also will be directed to file a projected cash flow statement for the first year of operations, including an estimate of start-up costs, plus a business plan covering, at a minimum, ridership projections, ridership demographics, staffing, marketing, acquisition of office and garage facilities, and insurance.⁶

The application states that applicant will enter into contracts with its drivers and that its drivers will be subject to applicant's own regulations. Applicant will be directed to file copies of the proposed contract and regulations.

THEREFORE, IT IS ORDERED that applicant shall file with the Commission, no later than October 3, 1995, an original and four copies of the following:

1. a current balance sheet and any legally enforceable stock subscriptions;
2. a projected cash flow statement for the first year of operations, including an estimate of start-up costs;
3. a business plan covering, at a minimum, ridership projections, ridership demographics, staffing, marketing, acquisition of office and garage facilities, and insurance;
4. the proposed driver contract; and

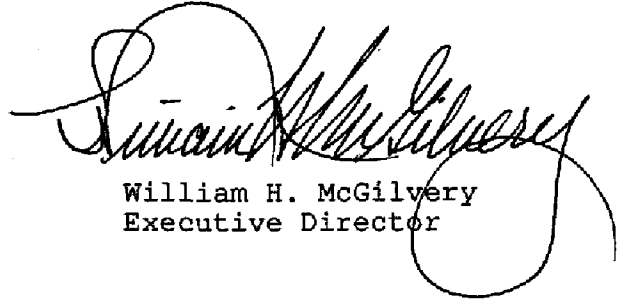
⁴ In re Model Transit, Inc., AP-92-27, Order No. 4003 (Sept. 21, 1992) (emphasis added).

⁵ See id. at 2 (applicant directed to file notarized balance sheet showing assets sufficient to commence and sustain operations).

⁶ See In re MTS-Mouling Transp. Sys., Inc., No. AP-92-30, Order No. 4044 (Jan. 26, 1993) (regular-route applicant directed to produce same).

5. the proposed driver regulations.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND
SHANNON;

A large, stylized handwritten signature in black ink, which appears to read "William H. McGilvery". The signature is written in a cursive style with a large loop at the end.

William H. McGilvery
Executive Director